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June 13, 2000

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Petition for Arbitration of the Interconnection Agreement between BellSouth Telecommunications, Inc. and Time Warner Telecom of the Mid-South, L.P. Pursuant to Section 252(b) of the Telecommunications Act of 1996*
Docket No. 99-00797

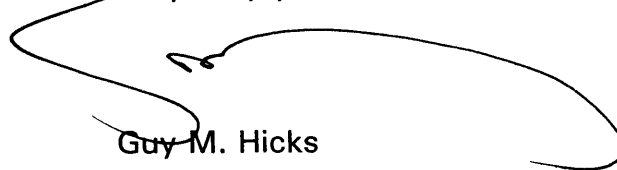
Re: *Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996*
Docket No. 99-00430

Re: *Petition of NEXTLINK TENNESSEE LLC for Arbitration of Interconnection with BellSouth Telecommunications, Inc.*
Docket No. 98-00123

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of the Reply Memorandum in Support of BellSouth Telecommunications, Inc.'s Motion for Clarification. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,



Guy M. Hicks

GMH:ch
Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee**

In Re: *Petition for Arbitration of the Interconnection Agreement between BellSouth Telecommunications, Inc. and Time Warner Telecom of the Mid-South, L.P. Pursuant to Section 252(b) of the Telecommunications Act of 1996*

Docket No. 99-00797

Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996

Docket No. 99-00430

Petition of NEXTLINK TENNESSEE LLC for Arbitration of Interconnection with BellSouth Telecommunications, Inc.

Docket No. 98-00123

**REPLY MEMORANDUM IN SUPPORT OF
BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION FOR CLARIFICATION**

I. INTRODUCTION

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this reply memorandum in support of its motion requesting that the Tennessee Regulatory Authority ("Authority"), acting as Arbitrators pursuant to Section 252 of the Telecommunications Act of 1996 ("1996 Act"), clarify the interim compensation mechanism for traffic to Internet Service Providers ("ISPs") under BellSouth's interconnection agreements with Time Warner Telecom of the Mid-South, L.P. ("Time Warner"), ITC^DeltaCom Communications, Inc. ("DeltaCom"), and NEXTLINK

Tennessee, Inc. ("NEXTLINK"). Notwithstanding the arguments by these carriers to the contrary, the Authority should clarify: (1) that the payment of reciprocal compensation for ISP traffic on a "interim" basis will be subject to a retroactive "true-up" once the Federal Communications Commission ("FCC") adopts rules establishing an inter-carrier compensation mechanism for ISP traffic; and (2) that the parties will be required to comply with the FCC's inter-carrier compensation rules once they become effective.

II. DISCUSSION

Time Warner and DeltaCom's argument that it would be "premature" for the Authority to determine when and how to apply "to pre-existing interconnection agreements" any inter-carrier compensation mechanism established by the FCC is unpersuasive. Time Warner and DeltaCom Response at 2. First, the Authority need not make any such determination, and BellSouth is not asking the Authority to do so. The Authority need only decide that whatever inter-carrier compensation mechanism the FCC adopts will be implemented retroactively to the effective date of the parties' agreements, regardless whether that mechanism is a different reciprocal compensation rate, bill and keep, or a non-usage based cost recovery arrangement. The specifics of such implementation can be saved for another day.

Second, BellSouth's agreements with DeltaCom and Time Warner are not "pre-existing interconnection agreements." These agreements were the result of arbitrations commenced after the FCC made clear its intent to establish an inter-carrier compensation mechanism for ISP traffic and after the FCC initiated a

rulemaking to do precisely that. See Declaratory Ruling in CC Docket No. 96-98 in Notice of Proposed Rulemaking in CC Docket No. 96-68, *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 14 FCC Rcd 3689, 3691 ¶ 4 (1999) ("*Declaratory Ruling*"), *rev'd Bell Atlantic Telephone Companies v. FCC*, Nos. 99-1094 et al. 2000 WL 273383 (D.C. Cir. March 24, 2000). Thus, these agreements were executed with full knowledge that the inter-carrier compensation applicable to ISP traffic was subject to change.

That the FCC's *Declaratory Ruling* has been reversed does not affect the validity of BellSouth's motion, as Time Warner, DeltaCom, and NEXTLINK suggest. The D.C. Circuit did not establish any principle of law, but rather -- as the Court itself said over and over -- simply determined that the FCC had failed to provide a sufficient explanation for its conclusions in the *Declaratory Ruling*. See 2000 WL 273383 at *9 (vacating and remanding "[b]ecause the Commission has not provided a satisfactory explanation").

While Time Warner, DeltaCom, and NEXTLINK insist that it is "questionable" whether the FCC will be able to address the appellate court's concerns, the FCC obviously thinks otherwise. Indeed, the Chief of the FCC's Common Carrier Bureau has stated publicly that he believes that the FCC can and will provide the requested clarification and reach the same conclusion that it has previously -- that is, that ISP-bound calls do not terminate locally. See TR Daily, Strickling Believes FCC Can Justify Recip. Comp. Ruling In Face Of Remand, March 24, 2000 (stating that the Chief of the FCC's Common Carrier Bureau "still believes calls to ISPs are interstate in

nature and that some fine tuning and further explanation should satisfy the court that the agency's view is correct").

Furthermore, the FCC has made clear in other orders, which are unaffected by the D.C. Circuit's ruling, that Internet traffic is interstate in nature. *See Advanced Services Remand Order*, ¶ 16. *Order on Remand, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147 et al., FCC 99-413, ¶ 16 (Dec. 23, 1999) ("*Advanced Services Remand Order*"). Indeed, in its most recent ruling on the subject, the FCC has confirmed its "longstanding characterization of the service that [local exchange carriers] offer to enhanced services providers (which include ISPs) as exchange access." *Id.* ¶ 43. Nothing suggests that the FCC intends to abandon its long held view that Internet traffic is interstate in nature.

Time Warner's and DeltaCom's concern about what, if anything, the FCC will eventually do misses the point. Time Warner and DeltaCom Response at 2-3. Obviously, if the FCC declines to establish an inter-carrier compensation mechanism for ISP traffic, there would be nothing to "true-up." The same would be true if the FCC were to "simply delegate the fixing of reciprocal compensation rates to state arbitrators subject only to federal court review." *Id.* However, the Authority should not permit either party to the agreements to receive a windfall or to be unduly disadvantaged pending the completion of the FCC's rulemaking. A true-up is the only means to ensure that this does not happen.

Time Warner and DeltaCom (although not NEXTLINK) argue that a true-up would "have an anti-competitive impact." Time Warner and DeltaCom Response at 3. However, this argument does not withstand scrutiny. First, it is no coincidence that Time Warner and DeltaCom are affiliated or soon will be with two of the largest Internet Service Providers in the United States. Time Warner is being acquired by America Online, and an affiliate of DeltaCom – ITC Service Company, Inc. – is the largest shareholder of MindSpring, which is merging with EarthLink. The practical effect of these corporate arrangements is that BellSouth will be paying reciprocal compensation to Time Warner and DeltaCom for calls from BellSouth customers to Time Warner's and DeltaCom's affiliated ISPs. Thus, when Time Warner and DeltaCom talk about the difficulties of attempting to "recoup" funds from customers on a retroactive basis, they are really talking about recouping money from themselves or, at the very least, from their affiliated companies.

Second, Time Warner's and DeltaCom's complaints that a true-up "would increase the carrier's risk, deter investors, and dampen the carrier's ability to raise capital" ring hollow. This is evident from the fact that Time Warner has not opposed or given any indication that it intends to appeal the decision of the North Carolina Utilities Commission requiring the payment of reciprocal compensation for ISP traffic with a retroactive true-up. If Time Warner can live with a true-up in North Carolina, it is not clear why a true-up would be so objectionable in Tennessee.

The same is true for DeltaCom. For example, consistent with its prior rulings on the issue, the Georgia Public Service Commission recently announced its decision

in the DeltaCom arbitration and required the payment of reciprocal compensation for ISP traffic with a retroactive true-up. DeltaCom responded by immediately issuing a press release, proclaiming the ruling as "favorable" and "pro-competitive." See News Release, "ITC^DeltaCom Wins Favorable Georgia Arbitration Decision" (June 7, 2000) (copy attached). It is not clear how a true-up would be "anti-competitive" in Tennessee when, according to DeltaCom, a true-up is "pro-competitive" in Georgia.¹

For reasons that are not abundantly clear, DeltaCom (although not NEXTLINK or Time Warner) also opposes BellSouth's request that the Authority clarify that "completion of the FCC's rulemaking" refers to when the FCC's rules establishing an inter-carrier compensation mechanism for ISP traffic take effect, as opposed to when judicial review of such rules may be completed. This opposition makes little sense, since DeltaCom recently agreed to language obligating the parties to conform their interconnection agreement to "effective" regulatory and judicial decisions, rather than only those decisions that are "final and nonappealable."

III. CONCLUSION

The Authority has ruled that reciprocal compensation is an appropriate interim method to be used to recover the cost associated with the delivery of ISP-bound

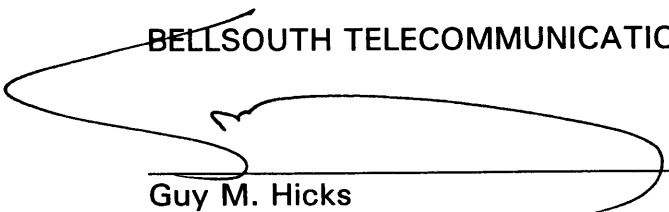
¹ The Georgia Commission's June 7, 2000 decision in the DeltaCom arbitration was rendered months after "the Court of Appeals vacated the FCC's order claiming jurisdiction over ISP-bound calls." Time Warner and DeltaCom Response at 4, n.2. This belies Time Warner's and DeltaCom's suggestion that the state commission decisions requiring a true-up were an aberration.

traffic pending completion of the FCC's rule-making with regard to this traffic. In opposing a true-up, Time Warner, DeltaCom, and NEXTLINK simply want to keep as much reciprocal compensation for ISP traffic as they can for as long as they can, regardless of what inter-carrier compensation mechanism the FCC establishes.

This could lead to a grossly unfair result for BellSouth and a windfall for Time Warner, DeltaCom and NEXTLINK. The Authority should not condone such a result and, consistent with the decisions of the other state commissions in arbitrations involving these same carriers, require that any reciprocal compensation payments for ISP traffic be made subject to a retroactive true-up. This is the only way to ensure that neither party to the interconnection agreement receives a windfall or is unduly disadvantaged pending the completion of the FCC's rulemaking.

Respectfully submitted,

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News Release

June 7, 2000
FOR IMMEDIATE RELEASE

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ITC^DELTACom WINS FAVORABLE GEORGIA ARBITRATION DECISION *Ruling Secures Reciprocal Compensation & Orders Expedited Hearing on Service Quality and Enforcement Measures for BellSouth*

West Point, GA (June 7, 2000) ■ ITC^DeltaCom, Inc. (Nasdaq/NMS: ITCD) yesterday received a favorable, pro-competitive ruling in its Georgia arbitration with BellSouth Telecommunications, Inc. The Georgia Public Service Commission voted in favor of ITC^DeltaCom on key issues requiring BellSouth to pay ITC^DeltaCom reciprocal compensation for the use of ITC^DeltaCom's fiber optic network. Pursuant to the Commission's ruling, ITC^DeltaCom expects to be paid approximately \$0.003 per minute for reciprocal compensation retroactive to July 1, 1999. In addition, the ruling establishes an expedited hearing schedule to adopt enforcement measures with financial consequences for failure of BellSouth to perform according to established service quality measures. The Commission's ruling also provides ITC^DeltaCom with a favorable time frame for BellSouth to provision collocation for ITC^DeltaCom enabling ITC^DeltaCom to accelerate market expansion in Georgia.

The Georgia Public Service Commission's ruling comes only two months after the Tennessee Regulatory Authority ruled in ITC^DeltaCom's favor on a similar arbitration in that state. The Tennessee Regulatory Authority ruling requires BellSouth to adhere to a set of service quality measures with financial consequences for failure to perform. The favorable outcomes of ITC^DeltaCom's Tennessee and Georgia arbitration mark significant victories for consumers of all Competitive Local Exchange Carriers (CLEC) operating in these key BellSouth territories.

"Today's decision by the Georgia Public Service Commission is welcomed news for us, as we are very pleased to see another state take steps to ensure ITC^DeltaCom is able to operate competitively in BellSouth territory," said Andrew M. Walker, vice chairman, chief executive officer, and president of ITC^DeltaCom. "We commend the Georgia Public Service Commission on today's ruling and its decision to move forward on the issue of establishing enforcement measures for BellSouth in providing its wholesale services to CLECs. This decision will ensure that CLECs can provide quality services for Georgia consumers."

About ITC^DeltaCom

ITC^DeltaCom, headquartered in West Point, Georgia, provides integrated telecommunications services to mid-sized and major businesses in the southern United States and is a leading regional provider of wholesale broadband services to other communications companies. ITC^DeltaCom's business communication services include local exchange service, long distance, enhanced data, Internet and operator services, and the sale and maintenance of customer premise equipment. The Company operates 34 branch locations in eight states and its 10-state, approximately 8,320-mile fiber optic network, reaches over 100 points of presence. ITC^DeltaCom

has interconnection agreements with BellSouth, GTE, Sprint and SBC Communications for resale and access to unbundled network elements, and is a certified Competitive Local Exchange Carrier (CLEC) in Arkansas, Texas and all nine BellSouth states. Additionally, ITC^DeltaCom offers collocation, web hosting, and managed services through e^deltacom, a division of ITC^DeltaCom. For additional information about ITC^DeltaCom, please visit the Company's website at www.itcdeltacom.com.

Statements contained in this news release regarding expected financial results, network deployment, product design and implementation, ITC^DeltaCom's business strategy and other planned events and expectations are forward-looking statements that involve risk and uncertainties. Actual future results or events may differ materially from these statements. Readers are referred to the documents filed by ITC^DeltaCom with the Securities and Exchange Commission, including ITC^DeltaCom's annual report on Form 10-K filed on March 30, 2000, for a discussion of important risks that could cause actual results to differ from those contained or implied in the forward-looking statements. These risks, which are discussed in ITC^DeltaCom's filings under the heading "Risk Factors," include dependence on new product development, rapid technological and market change, and risks related to future growth and rapid expansion. Other important risks factors that could cause actual events or results to differ from those contained in the forward-looking statements include, without limitation, delay(s) and/or difficulty(ies) in deployment and implementation of collocation arrangements and facilities, appeals of and/or failures by third parties to comply with rulings of governmental entities, inability to meet installation schedules, general economic and business conditions, failure to maintain underlying service/vendor arrangements, competition, adverse changes in the regulatory or legislative environment, and various other factors beyond ITC^DeltaCom's control. ITC^DeltaCom undertakes no obligation to release publicly any revisions to any forward-looking statements to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

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CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

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A handwritten signature in black ink, consisting of a stylized, cursive script that begins with a large, sweeping 'S' shape and ends with a horizontal line.